

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

DATAMONITOR SYSTEMS LLC,
Plaintiff

-VS-

**INTERNATIONAL BUSINESS MACHINES
CORPORATION,**
Defendant

W-22-CV-00954-DC-DTG

REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE

**TO: THE HONORABLE DAVID COUNTS,
UNITED STATES DISTRICT JUDGE**

This Report and Recommendation is submitted to the Court pursuant to 28 U.S.C. § 636(b)(1)(C), Fed. R. Civ. P. 72(b), and Rules 1(f) and 4(b) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges. Before the Court is the parties' Joint Motion to Dismiss with Prejudice under Rule 41(a)(2) (ECF No. 13). For the following reasons, the Court **RECOMMENDS** that the Case be **DISMISSED with PREJUDICE**.

Plaintiff, Datamonitor Systems LLC, and Defendant, International Business Machines Corporation have resolved their disputes in this action. It is therefore **ORDERED** that all claims and counterclaims in the above-styled case are dismissed, with prejudice to the rights of any party to refile the same or any part thereof. It is further **ORDERED** that each party be taxed its own costs of court, and the Clerk of Court is directed to close the above case if no objections are filed within 14 days.

V. OBJECTIONS

The parties may wish to file objections to this Report and Recommendation. Parties filing objections must specifically identify those findings or recommendations to which they object. The District Court need not consider frivolous, conclusive, or general objections. *See Battle v. U.S. Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v Arn*, 474 U.S. 140, 150–53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc). Except upon grounds of plain error, failing to object shall further bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas*, 474 U.S. at 150–53; *Douglass*, 79 F.3d at 1415.

Dated: January 26, 2023.


DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE